East Bay Chevrolet Co., d/b/a Time Chevrolet and East Bay Automotive Council. Cases 32-CA-347 and 32-CA-651

June 30, 1982

SUPPLEMENTAL DECISION AND ORDER

By Chairman Van de Water and Members Fanning and Jenkins

On May 30, 1979, the National Labor Relations Board issued a Decision and Order in the above-entitled proceeding, ¹ finding that the Respondent had violated Section 8(a)(5) and (1) of the Act by refusing to continue bargaining with the East Bay Automotive Council on a single-employer basis for a combined unit of shop and sales employees. As part of the affirmative remedy, the Board ordered the Respondent to recognize and bargain with the Council in the combined unit and, if agreement was reached, to make it retroactive to an earlier date when the Respondent had entered into a contract limited to shop employees.

Thereafter, the United States Court of Appeals for the Ninth Circuit refused to enforce the Board's Order requiring any agreement reached to be effective from a particular date, on the view that it compelled the parties to agree to a substantive term of the contract.² The court remanded the case to the Board for reconsideration of a remedial order in light of the court's opinion. The Board has accepted the remand.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Having accepted the remand, the Board recognizes the court's findings as the law of this case and amends its bargaining order, consistent with the court opinion, to delete that portion requiring any agreement resulting from the bargaining to be effective from a particular date.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board modifies its original Order, reported at 242 NLRB 625, as set out below:

- 1. Substitute the following for paragraph 2(a):
- "(a) Immediately recognize and bargain collectively in good faith with the East Bay Automotive

1 242 NLRB 625.
 2 East Bay Chevrolet d/b/a Time Chevrolet v. N.L.R.B., 659 F.2d 1006 (1981).

Council and its affiliate local unions as the exclusive representative of the employees in the appropriate bargaining unit herein and, if an understanding is reached, embody such agreement in a written signed contract."

- 2. Delete paragraph 2(b) and reletter the subsequent paragraphs.
- 3. Substitute the attached notice for the notice attached to the original Decision and Order.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

WE WILL NOT withdraw recognition of the East Bay Automotive Council and its four affiliate local unions as the exclusive collective-bargaining agent of our employees in the previously recognized unit.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL immediately recognize and bargain in good faith with the East Bay Automotive Council and its affiliate local unions as the exclusive collective-bargaining representative of all our employees in the appropriate unit and, if an understanding is reached, embody such agreement in a written, signed agreement.

EAST BAY CHEVROLET CO., D/B/A TIME CHEVROLET